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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,128	08/25/2003	Patrick Gwen	976,027	1042

7590 05/16/2006  
John S. Egbert  
Harrison & Egbert  
7th Floor  
412 Main Street  
Houston, TX 77002

EXAMINER

DOE, GRACE SC

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 05/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/647,128

Applicant(s)

GWEN, PATRICK

Examiner

Grace SC Doe

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This action is in response to Applicant's amendment received on 2/16/06.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 21-23 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Seber (US 6,170,104). Seber discloses a multi-functional hand tool apparatus containing a case (See fig. 2, parts 36 & 28; col. 5, lines 1-3), a pivotally mounted first cleaning tool (See fig. 2, part 32a; col. 4, lines 20-31, 41-42, 44), a pivotally mounted second cleaning tool (See fig. 2, part 32b; col. 4, lines 20-31, 41-42, 44), and a pivotally mounted third cleaning tool (See fig. 2, part 32c). The first cleaning tool includes a lever member extending outwardly of the case (See fig. 2, part 100a; col. 5, lines 16-24), angularly offset from the lever member of the second cleaning tool (See figure 2 part 100a, 100b, 100c; col. 5, lines 16-24).

4. Claims 32, 34, and 36-37 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Brown (US 5,423,427). Brown discloses a dental tool apparatus containing a case (See fig. 8, part 11; col. 3, lines 51-55), a pivotally mounted first cleaning tool (See fig. 8, part 13; col. 4, lines 1-7, 55-64), and a pivotally mounted second cleaning tool (See fig. 8, part 14; col. 4, lines 1-7, 55-64) wherein the first cleaning tool is capable of being used as a tongue scraper (See fig. 8, part 13; col. 4, lines 16-20) and the second cleaning tool is a pick capable of being used as a toothpick (See fig. 8, part 14; col. 4, 21-22). The apparatus also includes a pivotally mounted closure member (See fig. 8, part 12; col. 3, lines 51-55).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 21-25, 29, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5,423,427) in view of Seber (US 6,170,104). Brown, discussed above, fails to expressly disclose a lever. Seber discloses a first cleaning tool (See fig. 2, part 32a) including a lever member extending outwardly of the case (See fig. 2, part 100a; col. 5, lines 16-24), angularly offset from the lever member of the second cleaning tool (See figure 2 part 100a, 100b, 100c; col. 5, lines 16-24). Seber is considered analogous art because the disclosed lever member reasonably pertains to the problem in which Applicant is interested, facilitating tool selection. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the apparatus of Brown with the angularly offset levers of Seber in order to facilitate selection and deployment a tool (See col. 4, lines 61-63; col. 5, lines 16-24). As to claim 22, Brown further discloses a third pivotally mounted cleaning tool (See fig. 8, part 15). The first and second cleaning tools are located in a side-by-side relationship (See fig. 8). The apparatus also includes a pivotally mounted closure member (See fig. 8, part 12; col. 3, lines 51-55) capable of allowing the tools to move from a first to a second position and capable of allowing for the extension of one tool while retaining the others (See figs. 8 & 9). As to claim 29, Brown also discloses that the first cleaning tool is capable of being used as a tongue scraper (See fig. 8, part 13; col. 4, lines 16-20) and the second cleaning tool is a pick capable of being used as a

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toothpick (See fig. 8, part 14; col. 4, 21-22). As to claim 31, the case also includes an axle (See fig. 8, part 17).

8. Claims 26 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5,423,427), in view of Seber (US 6,170,104), and further in view of Allen (US 5,950,265). Brown in view of Seber, discussed above, fails to disclose a flap or notch. Allen discloses a first cleaning tool (See fig. 2, part 50) having an outwardly extending flap that abuts the closure member when the closure member is in the covering position (See fig. 3, part 70; col. 3, lines 62-67, col. 4, lines 1-3, 48-56). The first cleaning tool also discloses a notch, in which the closure member is received when the closure member is in a covering position (See fig. 3, part 72; col. 3, lines 62-67, col. 4, lines 1-3, 48-56). Allen is considered analogous art because the disclosed flap and notch reasonably pertains to the problem in which Applicant is interested, locking the tool position. Therefore it would be obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Brown in view of Seber with the flap and notch of Allen in order to lock the tools in an open and closed position (See col. 3, line 67; col. 4, lines 1-4).

9. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5,423,427), in view of Seber (US 6,170,104), and further in view of Glesser (US 4,776,094). Brown and Seber, discussed above, fail to disclose a case abutment member that contacts the lever. Glesser teaches a case abutment member (See fig. 2,

part 25; col. 3 lines 48-58; col. 4 lines 24-27) that contacts the lever member (See fig. 1, parts 33 & 34; col. 4 lines 13-27) of the first cleaning tool. Glesser is considered to be analogous art because the disclosed abutment member reasonably pertains to the problem in which Applicant is interested, stabilizing a tool in the open position.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the apparatus of Brown in view of Seber with the abutment mechanism of Glesser in order to lock a tool in the open position (See col. 2, lines 10-13).

10. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5,423,427), in view of Seber (US 6,170,104), and further in view of Millner (US 5,766,193). Brown in view of Seber, discussed above, discloses an apparatus containing a plurality of dental care implements (See Brown col. 2, lines 64-66) including a tool capable of being used as a tongue scraper (See Brown fig. 8, part 13) but fails to teach a tongue scraper having a combination of a plurality of truncated tubes and an outwardly extending blade. Millner discloses a truncated tongue scraper (See fig. 8; col. 3, lines 28-31) having a plurality of scraper pins (See fig. 1, part 28; col. 2, lines 55-56) and a blade (See fig. 8 part 26; col. 2, lines 47-49). Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the apparatus of Brown in view of Seber with the tongue scraper features of Millner in order to efficiently clean the tongue (See col. 1, lines 52-56) and provide for a more diversified and complete dental travel pack, further Brown's objective of providing

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a convenient portable pack having a plurality of dental care implements (See col. 1, 35-38).

11. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5,423,427) in view of Elias (US 5,409,022). Brown, discussed above, fails to expressly disclose a second toothpick. Elias discloses a case containing a pivotally mounted second toothpick having a different configuration from the first toothpick (See fig. 2, parts 13 and 15; col. 2, lines 64-68; col. 3, lines 1-21). Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the apparatus of Brown with the multiple toothpick configurations of Elias in order to more efficiently remove food residue and plaque from different portions of one's teeth (See col. 3, lines 62-68; col. 4 lines 1-23).

12. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5,423,427) in view of Millner (US 5,766,193). Brown, discussed above, discloses an apparatus containing a plurality of dental care implements (See col. 2, lines 64-66) but fails to teach a tongue scraper having a combination of a plurality of truncated tubes and an outwardly extending blade. Millner discloses a truncated tongue scraper (See fig. 8; col. 3, lines 28-31) having a plurality of scraper pins (See fig. 1, part 28; col. 2, lines 55-56) and a blade (See fig. 8 part 26; col. 2, lines 47-49). Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the apparatus of Brown with the tongue scraper of Millner in order to provide for



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a more diversified and complete dental travel pack which would further Brown's objective of providing a convenient portable pack having a plurality of dental care implements (See col. 1, 35-38). Inclusion of Millner's tongue scraper promotes complete oral hygiene, which as Millner admonishes, requires cleaning of the tongue as well as the teeth and gums (See col. 1, lines 10-13, 51-56).

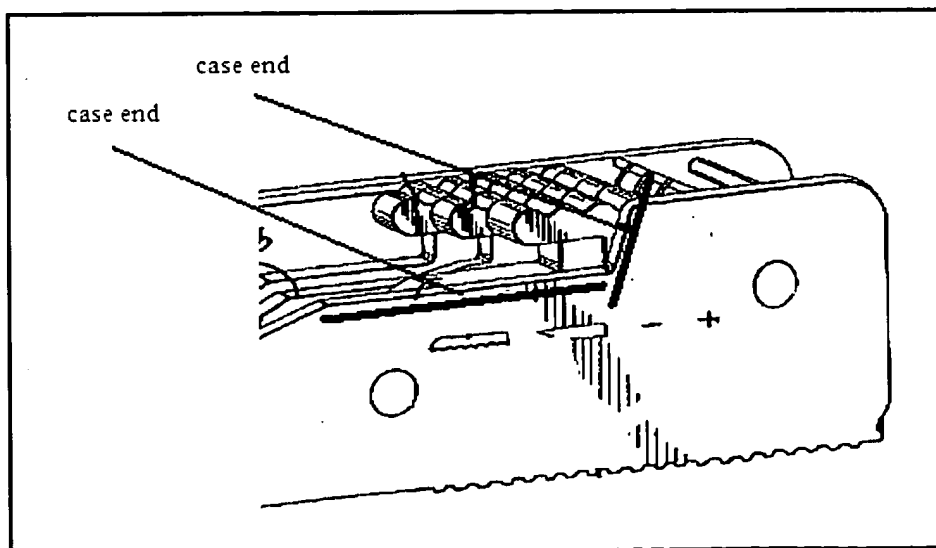
13. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5,423,427) in view of Allen (US 5,950,265). Brown, discussed above, fails to disclose a flap or notch. Allen discloses a first cleaning tool (See fig. 2, part 50) having an outwardly extending flap that abuts the closure member when the closure member is in the covering position (See fig. 3, part 70; col. 3, lines 62-67, col. 4, lines 1-3, 48-56). The first cleaning tool also discloses a notch, in which the closure member is received when the closure member is in a covering position (See fig. 3, part 72; col. 3, lines 62-67, col. 4, lines 1-3, 48-56). Allen is considered analogous art because the disclosed flap and notch reasonably pertains to the problem in which Applicant is interested, locking the tool position. Therefore it would be obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Brown with the flap and notch of Allen in order to lock the tools in an open and closed position (See col. 3, line 67; col. 4, lines 1-4).

***Response to Amendment***

14. Applicant's claim amendment is acknowledged. Please refer to the above claim rejections.

***Response to Arguments***

15. Applicant's arguments filed on 2/16/06 have been fully considered but they are not persuasive. Applicant's argument, regarding the levers disclosed in Allen, is moot in light of the above new rejection. With regards to Applicant's argument that Seber fails to disclose levers extending beyond an end of the case. Figure 2 shows levers (parts 100a-c) extending beyond the case (part 36a). The levers are located at an end region of the case (see below) and extend from an end of the case. The term end is not further defined and can be broadly interpreted as any of the below locations. Further, the levers are angularly offset. Each lever is offset from one another by what appears to be 90 degrees. Therefore the claim language fails to read over the art of Seber.



Applicant further argues that the cited art fails to disclose a pivotally mounted tongue scraper or a toothpick. The language of claims 29 and 32, regarding “tongue scraper” and “toothpick” is functional language describing the intended use of the tool. Brown expressly discloses two dental tools (See parts 13 & 14) capable of functioning as a scraper and (See part 13) and toothpick (See part 14). If the prior art structure is capable of performing the intended use, then it meets the claim.

Applicant's arguments regarding original claim 18 is moot in light of the above art rejection.

### ***Conclusion***

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:


A. U.S. Pat. No. 6,698,049 (McLoudrey) discloses a case containing at least two pivotally mounted tools with angularly offset lever members.

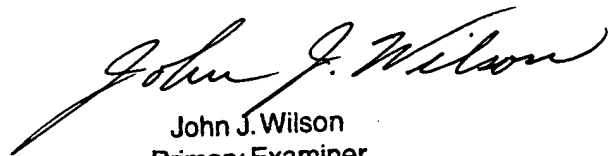
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Grace SC Doe whose telephone number is (571) 272-2831. The examiner can normally be reached on Mon. - Thurs. from 8:00am - 6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Grace SC Doe  
Examiner  
Art Unit 3732  
(571) 272-2831

  
John J. Wilson  
Primary Examiner